

BINGHAM

Edward F. Maluf
Direct Phone: 212.705.7987
Direct Fax: 212.702.3617
edward.maluf@bingham.com

October 23, 2007

By ECF and First Class Mail

The Honorable Arthur D. Spatt
United States District Court
1020 Federal Plaza
P.O. Box 9014
Central Islip, New York 11722

The Honorable Arlene R. Lindsay
United States District Court
814 Federal Plaza
Central Islip, New York 11722

Re: *Edward Shapiro, P.C. v. Laxman*, Index No. 06 CV 5865 (ADS) (ARL)

Your Honors:

We represent plaintiffs in this action and herein respond in opposition to the two letter motions made by defendants dated October 18, 2007 (submitted to Judge Lindsay, ECF docket number 120), and October 22, 2007 (submitted to Judge Spatt, ECF docket number 124). Both motions address the discovery schedule, but request different relief in the proposed scheduling orders.

We are presently taking steps to follow Judge Spatt's Order dated October 22, 2007 (a copy is attached as Exhibit A) directing plaintiffs' predecessor counsel to release his files as soon as any outstanding disbursements are paid. As a result, we are endeavoring to secure these files this week.

We note that defendants' motions were and are unnecessary, and therefore object to the relief sought therein. Last week, after attempting to work out a discovery schedule with defendants' counsel (a copy of the entire series of e-mail exchanges between counsel is attached in chronological order, pertinent e-mail underscored, as Exhibit B), we informed defendants' counsel that predecessor counsel would not participate in a transition or release his files. As a result, we informed defendants' counsel that we would have to seek the Court's guidance on how to proceed. Nonetheless, defendants filed two motions knowing that we could not meaningfully prepare for depositions.

As to the merits of both of defendants' motions, we object on the ground that the relief sought in one motion is inconsistent with the other, and on the further

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

Bingham McCutchen LLP
399 Park Avenue
New York, NY 10022-4689

T 212.705.7000
F 212.752.5378
bingham.com

A/72266469.2

The Honorable Arthur D. Spatt, The Honorable Arlene R. Lindsay
October 23, 2007
Page 2

ground that the proposed dates are unrealistic. For example, defendants have had plaintiffs' expert report for eight weeks. Nonetheless, defendants:

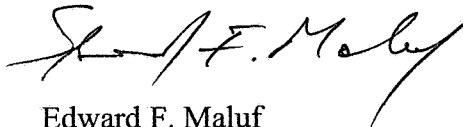
(1) in their motion to Judge Lindsay propose a meager one to nine calendar days between the service of the defendants' expert rebuttal report and his deposition; and

(2) in their motion to Judge Spatt propose ten calendar days between the service of the defendants' expert rebuttal report and his deposition, but also set the expert deposition to take place during a week when three fact witnesses are to be deposed.

We believe either proposed time frame is unrealistic because, based on our limited familiarity with the case, we are certain that reviewing the complex technical issues that will be discussed in the defendants' expert rebuttal, preparing for a deposition of defendants' expert, and conducting a deposition of defendants' expert, will require more time.

We propose addressing the status of the case, including the discovery schedule, with Judge Lindsay during the telephonic conference scheduled for October 29, 2007. We will, of course, proceed in any manner the Court directs. We regret having to inconvenience the Court at all with these issues. Nevertheless, we look forward to the Court's guidance on how best to proceed with the interests of justice in mind.

Respectfully submitted,



Edward F. Maluf

cc: Dariush Keyhani, Esq.
(by ECF and First Class Mail)